

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

CSX TRANSPORTATION, INC.,

*Plaintiff,*

vs.

ZAYO GROUP, LLC,

*Defendant.*

No. 1:21-cv-02859-JMS-MJD

**ORDER**

Plaintiff CSX Transportation, Inc. ("CSXT") asserts various claims against Defendant Zayo Group, LLC ("Zayo") related to Zayo's installation of a fiber optic network system that CSXT alleges damaged its property, and Zayo has filed third party claims against numerous contractors including Milenium Inc. ("Milenium"); Crossroads Communications Solutions, LLC ("Crossroads"); BSM Groups, LLC ("BSM"); JDH Contracting, Inc. ("JDH"); OCM Engineering, LLC ("OCM"); On Point Construction Management, Inc. ("On Point"); PLB Engineering, LLC ("PLB"); Spectrum Engineering, LLC ("Spectrum"); and Tesco Company, Inc. ("Tesco") (collectively, the "Third Party Defendants"). [[Filing No. 222](#).] Zayo asserts third party claims for breach of contract and indemnification against each of the Third Party Defendants, seeking indemnification "from and against [CSXT's] claims and damages alleged in this action." [[Filing No. 222 at 6-16](#).] Many of the Third Party Defendants have filed Motions for Summary Judgment. [[Filing No. 415](#); [Filing No. 418](#); [Filing No. 421](#); [Filing No. 423](#); [Filing No. 426](#).]<sup>1</sup>

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<sup>1</sup> All Third Party Defendants except Milenium and BSM have moved for summary judgment on Zayo's third party claims.

On April 23, 2024, the Court granted in part and denied in part a Motion for Partial Summary Judgment filed by Zayo related to CSXT's claims against it. [\[Filing No. 607.\]](#) The same day, the Court issued an Order requiring Zayo to show cause why the third party claims associated with CSXT's claims that have either been dismissed or for which Zayo has been granted summary judgment should not be dismissed as moot. [\[Filing No. 608 at 2.\]](#) The Court stated that in its response to the Order to Show Cause, "Zayo must specifically explain how the Court's rulings on its Motion for Partial Summary Judgment impact its claims against each third party defendant." [\[Filing No. 608 at 2.\]](#) The Court also gave the Third Party Defendants that had filed Motions for Summary Judgment an opportunity to respond to Zayo's response to the Order to Show Cause and instructed them to state whether their Motion for Summary Judgment should remain pending. [\[Filing No. 608 at 2.\]](#)

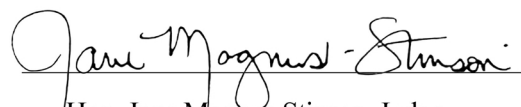
Zayo filed a 21-page response to the Court's Order to Show Cause on May 29, 2024, in which it stated that "if CSXT's claims as to a particular site have been dismissed or if the Court has granted Zayo summary judgment as to the claims associated with that site, Zayo agrees that its claims against the third party related to that site are now moot." [\[Filing No. 610 at 2.\]](#) Zayo stated further, however, that "CSXT and Zayo disagree on the breadth of the Summary Judgment Order," and went on to list sites for which CSXT contends claims remain, but for which Zayo believes no claims remain, and sites for which both CSXT and Zayo agree that at least some claims remain. [\[Filing No. 610 at 3-18.\]](#) The Third Party Defendants who have filed Motions for Summary Judgment all responded, as reflected in the Table below:

<b>Motion for Summary Judgment</b>	<b>Zayo's Position</b>	<b>Third Party Defendant's Position</b>
JDH Contracting [ <a href="#">Filing No. 415</a> ]	CSXT and Zayo disagree regarding some of the sites implicating JDH and there are other sites where CSXT and Zayo agree that some claims remain. [ <a href="#">Filing No. 610 at 5-12.</a> ]	JDH agrees and believes its Motion for Summary Judgment should remain pending. [ <a href="#">Filing No. 620.</a> ]
OCM [ <a href="#">Filing No. 418</a> ]	CSXT and Zayo disagree regarding some of the sites implicating OCM – if Zayo is correct, four sites implicating OCM remain. [ <a href="#">Filing No. 610 at 12-13.</a> ]	OCM agrees and believes its Motion for Summary Judgment should remain pending. [ <a href="#">Filing No. 619.</a> ]
On Point [ <a href="#">Filing No. 418</a> ]	CSXT and Zayo disagree regarding the single site implicating On Point – if Zayo is correct, no sites implicating On Point remain. [ <a href="#">Filing No. 610 at 13.</a> ]	On Point agrees and believes its Motion for Summary Judgment should remain pending unless Zayo's position is found to be correct which would moot its Motion for Summary Judgment. [ <a href="#">Filing No. 619.</a> ]
PLB [ <a href="#">Filing No. 418</a> ]	CSXT and Zayo disagree regarding the single site implicating PLB – if Zayo is correct, no sites implicating PLB remain. [ <a href="#">Filing No. 610 at 14.</a> ]	PLB agrees and believes its Motion for Summary Judgment should remain pending unless Zayo's position is found to be correct which would moot its Motion for Summary Judgment. [ <a href="#">Filing No. 619.</a> ]

Crossroads [ <a href="#">Filing No. 421</a> ]	CSXT and Zayo disagree regarding which sites implicating Crossroads remain and there is one Crossroads site for which Zayo agrees at least some claims remain. [ <a href="#">Filing No. 610 at 4-5.</a> ]	Crossroads agrees and believes its Motion for Summary Judgment should remain pending. [ <a href="#">Filing No. 614.</a> ]
Tesco [ <a href="#">Filing No. 423</a> ]	CSXT and Zayo disagree regarding some of the sites implicating Tesco and there are other sites where CSXT and Zayo agree that some claims remain. [ <a href="#">Filing No. 610 at 17-18.</a> ]	TESCO agrees and believes its Motion for Summary Judgment should remain pending. [ <a href="#">Filing No. 618.</a> ]
Spectrum [ <a href="#">Filing No. 426</a> ]	CSXT and Zayo disagree regarding some of the sites implicating Spectrum and there are other sites where CSXT and Zayo agree that some claims remain. [ <a href="#">Filing No. 610 at 14-17.</a> ]	Spectrum cannot determine whether its Motion for Summary Judgment should remain pending because of disagreement between CSXT and Zayo regarding which claims remain. [ <a href="#">Filing No. 621.</a> ]

Disagreements between CSXT and Zayo regarding which claims remain for which sites in light of the Court's Order on Zayo's Motion for Partial Summary Judgment make it impossible for the Court to determine the corresponding scope of the Third Party Defendants' Motions for Summary Judgment. Whether the pending Motions for Summary Judgment need to be fully decided depends on how those disagreements are resolved and there is a real risk of a waste of judicial resources if the Third Party Motions for Summary Judgment were to be decided before resolution. Accordingly, the Court **DENIES** the Third Party Defendants' pending Motions for Summary Judgment, [415; 418; 421; 423; 426], **WITHOUT PREJUDICE** to re-file them once issues regarding which claims remain for which sites are resolved.

Date: 7/16/2024



Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

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